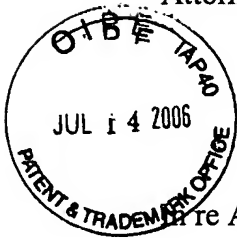


ZFV

Attorney Docket No.: 87333.2462

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of :
Hermann STALH *et al.* : Confirmation No.: 1083
Serial No. 10/774,410 : Group No.: 2884
Filed: February 10, 2004 : Examiner: Otilia Gabor

For: MEASURING DEVICE FOR DETERMINING THE CONCENTRATION OF GASES BY
INFRARED ABSORPTION

PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request that the Notice of Abandonment mailed July 11, 2006, for the above-referenced application be withdrawn. A Copy of a Response to an Office Action and a Petition For Extension of Time was timely filed on April 21, 2006, and is enclosed. Also enclosed is a copy of the stamped postcard receipt.

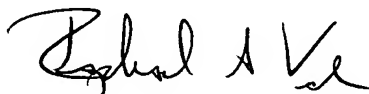
Upon review of the Response To The Office Action, it was noted that the application serial number provided in the Response and Petition is inadvertently listed as 10/744,410. The correct application serial number is 10/774,410. All other identifying information, however, is correct (*e.g.* filing date, first named Inventor, Art Unit and Examiner name).

Applicants believe that no fees are due in connection with this petition. The Commissioner, however, is hereby authorized to charge any costs or credit any overpayment to Deposit Account No. 50-2036.

Respectfully submitted,

BAKER & HOSTETLER LLP

Date: 7/14/06

A handwritten signature in black ink, appearing to read 'Raphael A. Valencia', written in a cursive style.

Raphael A. Valencia
Registration No. 43,216

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1050 Connecticut Avenue, N.W.
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RV/trl

101358050.1

The Patent Office acknowledges, and has stamped hereon, the date of receipt of the items checked:

Date: April 21, 2006

Atty Docket: 87333.2462

Applicant(s): Hermann STAHL et al.

Serial No.: 10/744,410

Confirmation No.: 1083

Filed: February 10, 2004

Title: MEASURING DEVICE FOR DETERMINING THE
CONCENTRATION OF GASES BY INFRARED ABSORPTION

(X) Amendment Under 37 CFR 1.111 (9 pages)

(X) Two Month Extension of Time (1 page)

(X) Charge Deposit Account No. 50-2036 \$450.00

Attorney: SAF/br



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Re Application of : Confirmation No.: 1083
Germann STAHL et al. : Group Art Unit: 2884
Application No.: 10/744,410 : Examiner: Otilia Gabor
Filed: February 10, 2004 :

For: **MEASURING DEVICE FOR DETERMINING THE
CONCENTRATION OF GASES BY INFRARED ABSORPTION**

PETITION FOR EXTENSION OF TIME

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant petitions the Commissioner of Patents and Trademarks under the provisions of 37 C.F.R. § 1.136(a) for a two-month extension-of-time, to extend the time for response to the Office Action dated December 14, 2005.

Please charge the required extension fee of \$450.00 to Deposit Account No. 50-2036.

Respectfully submitted,

BAKER & HOSTETLER LLP

A handwritten signature in black ink, appearing to read "Scott A. Felder".

Scott A. Felder
Reg. No. 47,558

Date: 21 April 2006
Baker & Hostetler LLP
Washington Square, Suite 1100
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Docket No. 87333.2462
Serial No.: 10/744,410
Customer No. 30734

Patent



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Hermann STAHL et al.

Application No.: 10/744,410

Filed: February 10, 2004

:
: Confirmation No.: 1083
:
: Group Art Unit: 2884
:
: Examiner: Otilia Gabor
:

For: **MEASURING DEVICE FOR DETERMINING THE
CONCENTRATION OF GASES BY INFRARED ABSORPTION**

United States Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

RESPONSE UNDER 37 C.F.R. § 1.111

Sir:

In response to the Office Action dated December 14, 2005, Applicants respectfully request reconsideration of the above-identified patent application in light of the following remarks.

Amendments to the Specification begin on page 2 of this paper.

Amendments to the Claims are reflected in the listing of claims which begins on page 3 of this paper.

Remarks begin on page 6 of this paper.

Docket No. 87333.2462
Serial No.: 10/744,410
Customer No. 30734

Patent

AMENDMENTS TO THE SPECIFICATION

Please amend the specification as follows:

Immediately below the Title, please add the following new paragraph:

This application is a national stage filing under 35 U.S.C. § 371 of PCT International Application PCT/EP02/09010, filed August 12, 2002 and claiming priority to German Patent Application No. DE 10138302.9, filed August 10, 2001.

AMENDMENTS TO THE CLAIMS

Please amend the claims as follows. This listing of claims will replace all prior versions and listings of claims in the application.

1 (currently amended). Measuring device for determining the concentration of gases by infrared absorption with a modulable radiation source, which, together with two radiation detectors that are located in the beam path, one of which is connected as a measuring detector and the other as a reference detector, is located in the interior of a housing, which is sealed, gastight with respect to the gas to be measured, wherein at least one infrared-permeable window, which closes off the interior of the housing with respect to the gas to be measured is located in the beam path between the radiation source and the radiation detectors, characterized in that the beam path is split into at least three partial sections (21, 22, 23), of which the first section (21) is located between the radiation source (2) and a first infrared-permeable window (3), that the second section (22) is formed as the measurement section accessible to the gas and extends from the first infrared-permeable window (3) to a second infrared-permeable window (4), and that the third section (23) is located between the second infrared-permeable window (4) and the radiation detectors, wherein the housing (11) has dimensional stability with respect to temperatures up to at least 100°C, and wherein the first and second infrared-permeable windows (3, 4) and the measurement section are located in a measuring cuvette (1).

- 2 (currently amended). Measuring device for determining the concentration of gases by infrared absorption in an incubator with a radiation source and two radiation detectors found in the beam path, one of which is a measuring detector and the other a reference detector, and with a housing (11), which is sealed gastight with respect to the gas to be measured, characterized in that a measuring cuvette (1) with a heating device (17) for the heating of a measuring chamber, a first infrared-permeable window (3), and a second infrared-permeable window (4) is provided.
- 3 (previously presented). Measuring device according to Claim 1, characterized in that at least one beam splitter is located in the beam path of the radiation source (2).
- 4 (currently amended). Measuring device according to Claim 1, characterized in that the measuring section possesses (22) ~~is located in a measuring cuvette, whose~~ dimensional stability with respect to heat ~~extends~~ up to a temperature of at least 100°C and ~~which~~ seals off the housing (11) with respect to the outside.
- 5 (previously presented). Measuring device according to Claim 4, characterized in that the windows (3, 4) which are located in the beam path of the measuring section (22), are made of calcium fluoride.
- 6 (previously presented). Measuring device according to Claim 1, characterized in that aluminum or brass is used as the material of the cuvette (1) outside the windows.
- 7 (previously presented). Measuring device according to Claim 1, characterized in that a first and a third partial section (21, 23) of the beam path are located in interior spaces of the housing (11), which are themselves sealed.

8 (previously presented). Measuring device according to Claim 1, characterized in that at least one absorption agent for carbon dioxide is found in the sealed interior of the housing (11).

9 (previously presented). Measuring device according to Claim 1, characterized in that the ratio of the length of the measuring section (22) to the length of the partial sections (21, 23) of the beam path, which passes through the interior of the housing, is in the range of 1:4 to 1:10.

10 (previously presented). Measuring device according to Claim 1, characterized in that a single radiation source (2) is provided, which has a reflector (27) on the side turned away from the measurement.

11 (previously presented). Measuring device according to Claim 1, characterized in that the radiation detectors, together with the beam splitter, are located in a detector module (31), which seals off the interior of the housing (11) and which is connected to the housing in a detachable manner.

12 (previously presented). Measuring device according to Claim 1, characterized in that the radiation source (2) is located in a submodule made of aluminum, which seals off the interior of the housing and which has a recess in the form of an ellipsoid for the formation of a reflector (27).

REMARKS

Claims 1-12 are pending and stand rejected. Claims 1, 2, and 4 are amended herein. Support for these amendments can be found, for example, in paragraph [0023] of the specification and FIG. 1. No new matter is added herein.

Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein. The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references.

Amendments to the Specification

Priority

Applicants have amended the specification to add a paragraph identifying the present application as a national stage filing under 35 U.S.C. § 371 entitled to priority of German application DE 10138302.9.

Rejection Under 35 U.S.C. § 102(d)

The Examiner rejects claims 1-12 under 35 U.S.C. § 102(d) as barred by the disclosure of the claimed invention in German Patent Application DE 10138302.9 filed more than twelve months prior to the filing date of the current application. Applicants respectfully traverse this rejection.

The present application is a national stage filing under 35 U.S.C. § 371 of PCT International Application PCT/EP02/09010, filed August 12, 2002, which in turn claims priority to German Patent Application No. DE 10138302.9, filed August 10, 2001.¹ The present application was filed in the United States on February 10, 2004, the 30-month anniversary of the August 10, 2001 priority date. As required by 35 U.S.C. § 371, the present application was accompanied by the basic national fee² and a copy of the International Patent Application. The

¹ August 10, 2002 fell on a Saturday, such that the filing of the International Application on August 12, 2002 was timely.

² In fact, a fee in excess of the basic national fee.

Declaration was timely filed in response to a Notice to File Missing Parts of Nonprovisional Application mailed May 6, 2004.

In accordance with 37 C.F.R. § 1.55(a)(1)(ii), this claim for priority is being made during the pendency of the application and within the time limits set forth in the PCT and the Regulations under the PCT. No petition or fee is required. Having therefore established that the present application is entitled to claim priority to the asserted reference, Applicants respectfully submit that the rejection under section 102(d) is improper and should be withdrawn.

Rejection Under 35 U.S.C. § 102(e)

The Examiner rejects claims 1-4, 6-8, and 10-12 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,875,399 to McVey ("McVey"). To anticipate a claim, a single prior art reference must expressly or inherently disclose each and every element of the claimed invention. MPEP § 2131 (citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987)). Applicants respectfully submit that McVey fails to meet this standard.

Claim 1 recites that "the first and second infrared-permeable windows (3, 4) and the measurement section *are located in a measuring cuvette (1)*" (emphasis added). Claim 2 similarly recites that the measuring cuvette includes "a first infrared-permeable window (3), and a second infrared-permeable window (4)...." That is, the measuring section and the infrared-permeable windows are part of the cuvette. Specification, paragraph [0023].

McVey, by contrast, teaches first and second infrared-permeable windows 112, 116 that are integrated into the housings 108, 118 of the transmitting and receiving portions 98, 94, respectively. McVey, Col. 11, Lines 23-34. Thus, they are not part of hollow body 102, which the Examiner analogizes to the measuring section of the present invention. Thus, McVey fails to teach each and every element of claims 1 and 2. Applicants accordingly respectfully request withdrawal of the rejection.

Claims 3, 4, 6-8, and 10-12 depend from claim 1. It is axiomatic that claims depending from allowable claims are allowable as well. Thus, for at least the foregoing reasons, Applicants earnestly solicit the Examiner to withdraw the rejection of dependent claims 3, 4, 6-8, and 10-12.

Rejections Under 35 U.S.C. § 103

The Examiner rejects claims 5 and 9 under 35 U.S.C. § 103 as obvious over McVey. To establish a *prima facie* case of obviousness, the Examiner must demonstrate some suggestion or motivation to combine one or more references, with a reasonable expectation of success, to teach each and every claimed limitation. MPEP § 2142. Applicants respectfully traverse the rejections.

As described above, McVey fails to teach each and every element of claim 1. Claims 5 and 9 both depend from claim 1. Therefore, for at least the reasons set forth above with respect to claims 1 and 2, Applicants submit that claims 5 and 9 are not *prima facie* obvious. Applicants accordingly respectfully request withdrawal of this rejection.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and request that all objections and rejections be withdrawn, that all pending claims be allowed, and that the application be passed to issue. If, for any reason, the Examiner finds the application to be in other than condition for allowance, the Examiner is invited to contact the undersigned in an effort to resolve any matter still outstanding before issuing another action.

Applicants believe that a two month extension of time is necessary for this paper to be considered timely filed, and hereby petition for such extension under 37 C.F.R. § 1.136. Please charge the extension fee of \$450.00, and credit any overpayments to Deposit Account No. 50-2036 with reference to Attorney Docket No. 87333.2462.

Respectfully submitted,

BAKER & HOSTETLER LLP



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